

REMARKS

The Applicant thanks the Examiner for the telephone interview of December 12, 2007 regarding the subject matter of the independent claims and the discussion with regards to the fact that the Applicant's pervious material permits an even heating, or diffusion of the heat across the entire surface of the layer formed of pervious material. In accordance with this discussion, and the indication that such a feature overcomes the anticipation rejection under Berke `400, the Applicant points out that claims 15, 22 and 27 are amended to include this subject matter. Claim 30 was also amended to correct a typographical error. If any further amendment in this regard is believed necessary to place this case in condition for allowance, the Examiner is courteously invited to contact the undersigned Attorney of Record to discuss the same.

Claims 15-16, 18-19, 21, 27, 30-34 and 36 are rejected, under 35 U.S.C. § 102(b), as being anticipated by Berke `400. The Applicant acknowledges and respectfully traverses the raised anticipatory rejection in view of the following remarks.

In order to properly support a rejection under 35 U.S.C. § 102(b) the applied reference must disclose, teach or suggest each and every feature of the presently claimed invention. As discussed in the Applicant's previous response of April 6, 2007, it is an important aspect and feature of the present invention that one of the layers of the blanket is fabricated from porous, or "pervious" material as discussed at least at paragraph's 016 and 017 of the Applicant's specification;

Delivering heat spread over the surface of the porous material advantageously has the effect of evenly warming the patient without forming relatively high velocity streams of air (as in the prior art blanket where the air is delivered via discreet holes).

As noted before, independent claim 15 includes the subject matter of previous claim 17 including the feature that, "one of the two layers of the blanket has a portion of its surface formed of *pervious material* . . .".

In the latest office action the Examiner alleges that Berke `400 discloses the use of woven fabric and that, "[a] woven fabric is pervious." Arguably, Berke `400 discloses a woven fabric. However, the Examiner's precipitous leap to the conclusion that "[a] woven fabric is pervious" is merely conclusory and not supported by any evidence or disclosure in the reference or by any technical documentation or reference. A fabric can be so loosely woven that it would be pervious to air-water, etc., but it is just as likely that a fabric is woven so tightly as to be impervious to air-water. For example, a common nylon windbreaker or jacket available in most any sporting goods store is a woven nylon shell that is impervious to wind and light rain.

What is clearly more telling is that after discussing that both woven and non-woven material can be used to make the article, Berke `400 specifically explains that "[t]he material is water-proof and air impervious". In order to allow airflow to a patient, air holes are punched into the article (column 3, lines 60 to 65). Berke `400 then clearly states "[t]he article is eventually filled with the heated air, whereupon it then passes through the air openings and unto the patient" (column 4, lines 23-25). Critically, Berke `400 does not disclose either explicitly or implicitly that the heated air passes through the fabric, but in fact clearly explains that the heated air "passes through the air openings" that were punched in the fabric.

Maintaining an anticipation rejection must be supported by some actual evidence or disclosure in the applied reference. Nowhere in Berke `400 is a pervious material discussed, nor that woven materials are pervious. If the Examiner disagrees with this, or the applicability of the applied Berke `400 reference, the Applicant respectfully requests the Examiner to indicate the specific passage or passages, or the drawing or drawings, which contain the necessary teaching, suggestion and/or disclosure required by case law. As such teaching, suggestion and/or disclosure is not present in the applied references, the raised rejection

should be withdrawn at this time. Alternatively, if the Examiner is relying on his/her expertise in this field, the Applicant respectfully requests the Examiner to enter an affidavit substantiating the Examiner's position so that suitable contradictory evidence can be entered in this case by the Applicant.

In any event, a pervious, or porous material is believed sufficiently defined in the Applicant's specification so that it is differentiated from the Berke `400 reference. At paragraph 036 of the Applicant's specification, it is specified that:

The first layer 3 is substantially non porous to air. The second layer 4, however, is made of porous material and is substantially porous over its entire surface area. Warm air pumped into the hollow air space 5, therefore, escapes via the entire surface of the second layer 4.

Persons of ordinary skill in the art would clearly understand the difference between the Applicant's porous and pervious material (which allows for airflow over the entire pervious surface) and an impervious material with discreet air holes punched in it as in Berke `400 which, as explicitly stated, permits heated air flow only through the discreet air holes.

In order to clarify this aspect of the present invention, and in accordance with above noted paragraph 036 the Applicant has amended claim 15 to recite the feature "wherein one of the two layers of the blanket has a portion of its surface formed of pervious material so that the warmed air is delivered to the patient receiving space via *the entire surface of the pervious material*", and similarly claim 27 now recites "wherein one of the two layers of the blanket has a portion of its surface *formed of pervious material* so that the warmed air is delivered to the patient receiving space *across the entire surface of the pervious material*". This is clearly not possible in Berke `400 where holes are punched in the fabric, since the very definition of a hole denotes some level of structural material definitively surrounding and defining the hole, through which heated air is not delivered to the patient.

In order to properly support a rejection under 35 U.S.C. § 102(b) the applied reference must disclose, teach or suggest each and every feature of the presently claimed invention. Since Berke `400 does not disclose either expressly or inherently the use of a pervious material, and, in fact, contrary to the unsupported conclusion that a woven fabric is a pervious fabric, actually teaches using an impervious material, each and every feature of the presently claimed invention is not taught, disclosed or suggested in any manner. If anything what is inherently disclosed by Berke `400, it is that the very nature of cutting or punching holes in the fabric indicates that the material disclosed by Berke `400 is not pervious, and thus the air cannot escape *across the entire surface* of the material as now specifically recited in Applicant's independent claims 15, 22 and 27.

The Applicant believes that it is a strained interpretation at the least to infer that the term "pervious" covers an impervious material that has air holes through it. It is clear from dictionary definitions that the term pervious would not cover such materials. It is also completely clear from the specification that such materials are not contemplated to be within the bounds of the invention. In most dictionary definitions, the term "pervious" is defined as a substance or material that can be penetrated or permeated. The definition of "permeated" is to spread or diffuse through, as in to spread or diffuse through a porous substance. Applicant does not believe it can be said that an impervious material with air holes in it allows a substance to "diffuse through" it. The term "diffuse" and indeed, the term pervious, would suggest to a skilled person that the air passes through the material substantially over the entire pervious surface, in a diffuse manner. This is, in fact, one of the main features of the invention. Diffusing the warm air through the material avoids the problems of prior art blankets which tends to create a jet effect by passing the air via discrete holes, which can potentially cause harm to the patient as discussed throughout the specification.

The description in the specification of the present application also clearly steers the skilled person away from a material that has holes punched in it. The background of the

invention section and the discussion of the problems in the prior art refer to the problems associated with materials which have air holes in them. It is therefore clear that such materials are not covered by claim 15.

Besides the fact that such a feature of the presently claimed invention is not disclosed, taught or suggested by the cited reference, there are significant practical differences between the arrangements. Problems with blankets with air holes for the provision of warm air are clearly enunciated in the preamble of the specification of the present application (see particularly pages 1 and 2). For example, depending on the velocity at which warm air is pumped from the heating unit through the air holes, a "jet" effect can occur and the patient can actually be cooled rather than warmed. This is a problem which is not addressed by Berke `400 and, in fact, may be exacerbated by the reference. It is particularly critical for small humans and animals, where discreet holes in the inner layer of a warming blanket (or the article of Berke) could result in cooling of the animal or small human patient which could lead to death. It should also be noted that there is no suggestion in Berke of using the article with animals or small animals (claims 19 and 30).

Claims 22-26 and 37 are rejected, under 35 U.S.C. § 103, as being unpatentable over Berke `400 in view of Hagopian `997 . The Applicant acknowledges and respectfully traverses the raised obviousness rejection in view of the above amendments and the following remarks. Even if the two references can be combined, and the Applicant does not hereby acquiesce to any such combination, there is nothing in the prior art references, either alone or in combination which suggests or discloses at least the two features discussed above with respect to claim 15 and the anticipation rejection. Like Berke `400, Hagopian `997 also fails to disclose a "pervious" or porous material. In fact, the inflatable chambers 12 in this new reference are vented similar to the Berke `400 by a hole, or vent 122 punched in the chamber wall. Even if it is somehow possible to combine Hagopian `997 with Berke `400, there is still no suggestion or disclosure of (1) a porous or pervious material utilized to fabricate such a warming blanket.

Nor does the combination of Berke `400 with a seat cushion disclosed by Hagopian `007 disclose a surgical warming blanket as recited in Applicant's claim 37 with the particularly claimed structure for facilitating use during surgery. Claim 37 currently recites "A surgical warming blanket arranged for use during surgery on a patient and comprising at least two layers . . . ". Also claim 37 recites the features of, "one of the two layers of the blanket having a portion of its surface *formed of pervious material* so that the warmed air is delivered to the patient receiving space *evenly across the entire surface* of the pervious material". It is important to note that the holes formed in the impervious material of Berke and Hagopian cannot by their very nature deliver or diffuse air evenly across the entire surface of the material as specifically recited in claim 37. Thus, even if the references can be combined, as neither the pervious material, nor the even distribution of heated air over the entire surface of the material is disclosed, taught or suggested either by Berke `400 and/or Hagopian `997 either alone or in combination, it is respectfully submitted that the invention now claimed is both novel and inventive.

Claims 29 and 35 are rejected, under 35 U.S.C. § 103, as being unpatentable over in Berke `400 in view of Tomic-Edgar et al. `144. As these claims are dependent upon claims 22 and 27 respectively, which are believed allowable in view of the above amendments and remarks, these claims are believed allowable as well.

If any further amendment to this application is believed necessary to advance prosecution and place this case in allowable form, the Examiner is courteously solicited to contact the undersigned representative of the Applicant to discuss the same.

In view of the above amendments and remarks, it is respectfully submitted that all of the raised anticipation and obviousness rejections should be withdrawn at this time. In view of the foregoing, it is respectfully submitted that the raised rejection(s) should be withdrawn and this application is now placed in a condition for allowance. Action to that end, in the form of an early Notice of Allowance, is courteously solicited by the Applicant at this time.

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The Applicant respectfully requests that any outstanding objection(s) or requirement(s), as to the form of this application, be held in abeyance until allowable subject matter is indicated for this case.

In the event that there are any fee deficiencies or additional fees are payable, please charge the same or credit any overpayment to our Deposit Account (Account No. 04-0213).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. Daniels', written in a cursive style.

Scott A. Daniels, Reg. No. 42,462
Customer No. 020210
Davis Bujold & Daniels, P.L.L.C.
112 Pleasant Street
Concord, NH 03301-2931
Telephone 603-226-7490
Facsimile 603-226-7499
E-mail: patent@davisandbujold.com